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13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 SAN FRANCISCO DIVISION

17 ASHLEY GJOVIK,

18 Plaintiff,

19 v.

20 APPLE INC.,

21 Defendant.

22 Case No. 23-cv-4597-EMC

23 **[PROPOSED] ORDER GRANTING**
DEFENDANT APPLE INC.'S MOTION
TO DISMISS PLAINTIFF'S THIRD
AMENDED COMPLAINT

24 Dept: Courtroom 5, 17th Floor
25 Judge: Honorable Edward M. Chen
26 Date: May 16, 2024
27 Time: 1:30 p.m.

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1 Pending before the Court is Defendant Apple Inc.'s Motion to Dismiss Plaintiff's Third
 2 Amended Complaint. Having considered the relevant papers and pleadings on file with the Court
 3 in this matter, as well as the arguments of counsel, the Court determines:

- 4 1. The Court **DISMISSES, with prejudice**, Plaintiff's First Claim under RICO. Plaintiff fails
 5 to state a claim under 18 U.S.C. § 1962(a) because she fails to plead that Apple used or
 6 invested money it received from supposed racketeering to injure her, and she fails to state
 7 a claim under 18 U.S.C. § 1962(c) and (d) because she fails to allege the existence of an
 8 "enterprise" separate and distinct from Apple or a pattern of racketeering activity.
- 9 2. The Court **DISMISSES, with prejudice**, Plaintiff's Second Claim under the Sarbanes-
 10 Oxley Act ("SOX") because Plaintiff fails to allege facts that, if true, would demonstrate
 11 that she complained about conduct that she reasonably believed violated a provision
 12 enumerated in 18 U.S.C. § 1514A(a)(1).
- 13 3. The Court **DISMISSES, with prejudice**, Plaintiff's Third Claim under the Dodd-Frank
 14 Wall Street Reform and Consumer Protection Act because it is derivative of her Second
 15 Claim, and thus fails for the same reasons her SOX claim fails.
- 16 4. The Court **DISMISSES in part, with prejudice**, Plaintiff's Fourth Claim alleging
 17 nuisance/nuisance *per se* because Plaintiff does not have a property interest in the Apple
 18 building she worked in (identified in the TAC as "825 Stewart Dr." or the "Superfund Site"),
 19 and has not identified a law that declares it a nuisance to operate a manufacturing facility
 20 (identified in the TAC as "3250 Scott Blvd" or "ARIA") or lease an office on a Superfund
 21 site.
- 22 5. The Court **DISMISSES, with prejudice**, Plaintiff's Fifth Claim asserting strict liability for
 23 ultrahazardous activities because it is time-barred, and because neither leasing office space
 24 on a Superfund site nor operating a silicon manufacturing facility is an ultrahazardous
 25 activity.
- 26 6. The Court **DISMISSES, with prejudice**, Plaintiff's Sixth Claim under the Bane Civil
 27 Rights Act because Plaintiff fails to allege facts showing Apple interfered with Plaintiff's
 28 constitutional or statutory rights, or that such interference included actual or attempted

1 threats, intimidation, or coercion.

2 7. The Court **DISMISSES, with prejudice**, Plaintiff's Seventh Claim under the Ralph Civil
3 Rights Act because Plaintiff does not allege facts suggesting any threat of violence by
4 Apple, or that any conduct by Apple was based on her political affiliation or other protected
5 characteristic.

6 8. The Court **DISMISSES, with prejudice**, Plaintiff's Eighth Claim under California Labor
7 Code section 1102.5 because Plaintiff fails to allege any facts that would establish a
8 violation of the underlying statutes she identifies as a predicate for this claim.

9 9. The Court **DISMISSES in part, with prejudice**, Plaintiff's Ninth Claim under California
10 Labor Code section 98.6 to the extent it is predicated on an alleged violation of California
11 Labor Code section 96(k) because Plaintiff fails to allege she was terminated for asserting
12 a recognized constitutional right.

13 10. The Court **DISMISSES, with prejudice**, Plaintiff's Twelfth Claim asserting breach of
14 contract and breach of the covenant of good faith and fair dealing because Plaintiff was an
15 at-will employee.

16 11. The Court **DISMISSES, with prejudice**, Plaintiff's Thirteenth Claim asserting intentional
17 infliction of emotional distress because it does not comply with FRCP 8(a). It should further
18 be dismissed because it is based on non-actionable conduct, it is preempted by California's
19 Workers Compensation exclusivity, and it is time-barred

20 12. The Court **DISMISSES, with prejudice**, Plaintiff's Fourteenth Claim asserting negligent
21 infliction of emotional distress both because Plaintiff cannot allege that Defendants owed
22 her the requisite duty, and because it is preempted by California's Workers Compensation
23 exclusivity.

24 13. The Court **DISMISSES, with prejudice**, Plaintiff's Fifteenth Claim under California's
25 Unfair Competition Law because Plaintiff does not allege any basis for restitution and thus
26 lacks standing.

27 Accordingly, Defendant Apple Inc.'s Motion to Dismiss is **GRANTED**, and Plaintiff's
28 first, second, third, fifth, sixth, seventh, eighth, twelfth, thirteenth, fourteenth, and fifteenth claims

1 are **DISMISSED with prejudice**, and Plaintiff's fourth and ninth claims are **DISMISSED in part**
2 **with prejudice**, as set forth above.

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4 **IT IS SO ORDERED**

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6 Dated: _____

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8 HON. EDWARD M. CHEN
9 U.S. DISTRICT COURT JUDGE

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